

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7258 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SINDHI ASHOKKUMAR MULLCHANDDAS

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner

MR LR PUJARA,A.G.P. for Respondents Nos. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/10/96

ORAL JUDGEMENT

Although the office has reported that the notices on the respondents nos.2 and 3 have not been served, Mr. Pujara, learned A.G.P. submits that he is appearing for the three respondents in this case. In this view of the matter, the service of notice is treated to be complete.

This Special Civil Application is directed against the detention order dated 9th April, 1996 passed by the District Magistrate, Mehsana, detaining the petitioner under the provisions of Gujarat Prevention of

Antisocial Activities Act, 1985. The detention order was executed on the same day i.e. 9th April, 1996 and since then the petitioner is under detention lodged at Bhuj Special Jail, Bhuj.

This Special Civil Application was filed on 24th September, 1996 and rule returnable within two weeks was issued on 25th September, 1996. So far neither any reply has been filed nor the affidavit of the detaining authority has been filed.

The grounds of detention show that three criminal cases were registered against the petitioner for offences under the Indian Penal Code at Police Station, Mehsana Town. After noticing the allegations in these criminal cases against the petitioner, the detaining authority has referred to the statements made by four witnesses on 25th March, 1996 with regard to the criminal activities of the petitioner, the use of deadly weapons by him and the extortion of money from the witnesses, demand of hafthas by threatening the witnesses with weapons and creating an atmosphere of terror. Keeping in view the aforesaid criminal activities of the petitioner, the detaining authority has recorded that in order to prevent the petitioner from committing the criminal and antisocial activities which disturbed the daily routine life of the people it was necessary to detain the petitioner and accordingly the detention order has been passed by keeping the identity of the witnesses a secret.

Although the detention order has been challenged on more than one grounds, the learned Counsel for the petitioner has submitted that the last criminal case was registered against the petitioner on 24th December, 1995 and the petitioner had been arrested by the police in connection with the said offence on 24th December, 1995 but was released on bail. The contention raised on behalf of the learned Counsel for the petitioner is that the detention order was passed on 9th April, 1996, after a period of more than three months. Even the statements of witnesses were recorded on 25th March, 1996 but the detention order was passed on 9th April, 1996. The argument of the learned Counsel for the petitioner is that the delay of over a period of three months in passing the detention order has not been explained by the respondents, and therefore, the detention order deserves to be set aside on this ground alone. The allegations with regard to delay of over a period of three months in passing the detention order have not been controverted by the respondents by filing any reply or affidavit and thus this delay remains unexplained and I find that the

detention order deserves to be set aside on this ground alone.

Accordingly, this Special Civil Application is allowed. The impugned detention order dated 8th April, 1996 passed by the District Magistrate, Mehsana is hereby quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

sf-mrc